

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FRANK ORTIZ

Plaintiff,

vs.

DAVID KELLY, et al.

Defendants.

Case No. 3:05-cv-00113-LRH-VPC

**DEFENDANTS' MOTION FOR
ENLARGEMENT OF TIME
AND ORDER**

Defendants David Kelly, Loyde Cobb, Adam Endel, Richard Falge, Rod Lightsey, Eldon McDaniel, Arthur Neagle, Conrad Schaff, Robert Sedlacek, and Dwight Neven, by and through by and through their attorneys of record Catherine Cortez Masto, Attorney General of the State of Nevada, and Kristen R. Geddes, Deputy Attorney General, and hereby file their *Motion for Enlargement of Time (First Request)*. This Motion is made pursuant to Fed. R. Civ. P. 6(b), the following Memorandum of Points and Authorities, and all other papers on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. NATURE OF THE MOTION

Defendants request a one (1) day enlargement of time to respond to Plaintiff's Objection to Defendants' Untimely Opposition re Spoliation Issue (#209-2).

II. STATEMENT OF FACTS

This case is an inmate-civil-rights litigation, wherein Ortiz has challenged the conditions of his confinement as violative of the First and Eighth Amendments to U.S. Constitution. (See Joint Pretrial Order, #159, p. 1, l. 21 to p. 2, l. 23.) At times relevant to this case, Ortiz was a prisoner at Ely State Prison ("ESP") in Ely, Nevada, and Defendants were ESP correctional officials. Ortiz asserts that Defendants violated his First Amendment right of access to the courts, by confiscating certain legal documents pertaining to an ongoing civil rights litigation, the effect of which caused him to lose that case on a summary judgment motion. (See *id.*, p. 6, l. 12 to p. 8, l. 21; and *id.*, p. 11, ll. 11-19.) Ortiz alleges that correctional officer Kelly physically and sexually assaulted him, in violation of the Eighth Amendment's proscription against cruel and unusual punishment. (*Id.*, p. 23, l. 26 to p. 9, l. 26.) Finally, Ortiz claims that Defendant Cobb violated his right to be free from cruel and unusual punishment by cuffing his ankle restraints too tightly. (*Id.*, p. 10, ll. 1-3.).

In preparation for the trial in this matter, which was previously set for October 7, 2008, the parties filed a number of motions in limine. Plaintiff's Motion in Limine #1 sought an order allowing Plaintiff to argue and make references to allegations of spoliation allegedly committed by Defendants. See (#196). Defendants opposed Plaintiff's motion (#204), and Plaintiff now complains that Defendants' opposition was untimely. Defendants intend to address this misguided allegation; however, they require an enlargement of time to do so.

III. ARGUMENT

A. The Instant Application For Enlargement Of Time Is Timely, And Not Made For The Purpose Of Delay.

Fed. R. Civ. P. 6(b) addresses enlargements of time and states:

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the parties, by written stipulation of counsel filed in

1 the action, may enlarge the period, or the court for cause shown
2 may at any time in its discretion (1) with or without motion or notice
3 order the period enlarged if request therefor is made before the
4 expiration of the period originally prescribed or as extended by a
5 previous order . . .

6 Good cause exists to enlarge the time by which a party may file an brief where
7 additional time is needed to prepare such a brief. See *O'Connor v. U.S. I.R.S.*, 698 F.Supp.
8 204, 205 (D. Nev. 1988) (district court granted the plaintiffs' motion for an extension of time to
9 oppose a motion for summary judgment); *Germaine Music v. Universal Songs of Polygram*,
10 275 F.Supp.2d 1288, 1301 (district court granted movant's motion for additional time to
11 oppose a motion for summary judgment, in part due to movant's need to acquire or prepare
12 extensive documents so as to be able to adequately oppose the motion).

13 Defendants request a one (1) day enlargement of time to file their Opposition to
14 Plaintiff's objection, as Defense counsel's congested calendar has simply not allowed for
15 ample time within which to complete the response by the due-date. For example, on the date
16 Defendants' response was due (today) undersigned attended an early mediation conference
17 at the U.S. District Court in Reno in USDC case number 3:06-cv-00312-ECR-VPC; had an
18 Answer due in USDC case number 3:07-cv-0460-LRH-RAM; had an opposition and other
19 motion due in USDC case number 3:07-cv-00440-JCM-RAM; had an opposition due in 3:08-
20 cv-00093-ECR-RAM; had discovery responses due, including interrogatory and request for
21 production of documents due in USDC case number 3:07-cv-00498-LRH-RAM; and also had
22 discovery responses due, to include 3 sets of request for production of documents, six sets of
23 request for interrogatories and six sets of request for admissions due in Sixth Judicial District
24 Court of Nevada case number PI-08-0600. Accordingly, counsel for Defendants had not had
25 sufficient time to prepare a response to Plaintiff's objection alleging their prior opposition to his
26 motion in limine was belated.

27 Defendants submit that a one (1) day enlargement of time will not work a prejudice to
28 Plaintiff.

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1 **III. CONCLUSION**

2 For all the foregoing reasons, Defendants respectfully requests the Court grant the
3 instant Motion for Enlargement of Time .

4 DATED this 3rd day of November, 2008.

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6 CATHERINE CORTEZ MASTO
Attorney General

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9 By:



10 Kristen R. Geddes
Deputy Attorney General

11 *Attorney for Defendants*

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13 ORDER

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15 IT IS SO ORDERED this 4th day of November, 2008.

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19 LARRY R. HICKS
20 UNITED STATES DISTRICT JUDGE